

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20348

FILE: B-205023

DATE: August 23, 1982

MATTER OF: Custom Janitorial Service

DIGEST:

1. GAO concludes that the protester's objections to the awardee's initial score for management and final score for experience are without merit. The initial management score is not germane since the record shows that subsequent discussions and proposal revisions resulted in a much lower final management score for the awardee. Further, while the awardee, as a new business entity, had no experience in similar cost-type contracts, the awardee's final score for experience reasonably reflects the experience of its principals in similar contracts.
2. GAO finds that the protester's objections to the agency's scoring of the protester's proposed materials cost and the awardee's proposed linen service cost are without merit. The scoring in both areas was proper because the record indicates that (1) the protester's proposed materials cost was unreasonably low and was not based on misleading advice from the agency, and (2) the awardee's proposed linen service cost was close to the Government estimate, which was based on actual expenses (adjusted for inflation) from a recent contract for similar services.
3. Contention--that the awardee's proposed General and Administrative expenses were unrealistically low and, thus, under the RFP, the agency should have penalized the awardee--is without merit in view of (1) the awardee's explanation that as a new company it has low indirect costs and (2) the agency's preaward audit concluding that the awardee could perform within the proposed General and Administrative amount.

4. GAO agrees with the protester that spread-scoring method used by the agency distorted the evaluation of cost proposals with regard to award fee and General and Administrative expenses. However, the protester was not prejudiced since it is clear from the record that the protester's proposal could not have been awarded the higher total score.

Custom Janitorial Service (Custom) protests the award of a cost-plus-award-fee contract to Ree's Contract Service (Ree's) under request for proposals (RFP) No. FTC-81-21 (NEG) issued by the Department of the Treasury for dormitory management and student support services at the Federal Law Enforcement Training Center, Glynco, Georgia. Custom essentially contends that Treasury did not properly evaluate the proposals and that the scoring system used by Treasury distorted the results. Treasury responds that the proposals were evaluated fairly and it is highly likely under any scoring system that Ree's proposal would have received the high score. We deny the protest.

The RFP disclosed that proposals would be evaluated in the categories of management and plan of operation (40 points), cost (35 points), and experience and past performance (25 points). The RFP stated that the management and experience categories would be evaluated subjectively and assigned a composite score, while the cost category would be assigned a score based on a predetermined scoring system. Following the RFP's disclosed evaluation plan, Treasury evaluated initial proposals, conducted discussions with Custom and Ree's (the only offerors in the competitive range), evaluated best and final offers, conducted a second round of discussions with both offerors, and evaluated revised best and final offers. Treasury's final evaluation resulted in a total score of 73.8 points for Custom and 85.1 points for Ree's and Treasury made award to Ree's.

Custom essentially contends that Treasury's evaluation of the management and experience aspects of the proposals was erroneous and that Treasury's

evaluation of the cost aspect of the proposals was based on an improper scoring system, which distorted the results.

Regarding the management factor, Custom states that Ree's initial proposal received a score of 39.2 out of 40 points but the contracting officer needed to request additional information on at least four of the most important areas of Ree's management proposal. Custom concludes that with so many areas of Ree's proposal in doubt, a near perfect management score was not correct. In our view, Treasury's initial scoring of Ree's proposal is not germane because Treasury's subsequent discussions with Ree's and Ree's two additional submissions gave Treasury's evaluators a better understanding of Ree's management proposal, which reflects Ree's final score of 35.1 points for management. We note that Custom does not dispute Treasury's final scoring of Ree's management proposal and we find no merit in this aspect of Custom's protest.

Regarding the experience factor, Custom states that Treasury's conclusion that both firms had about equally rated experience is unsupportable because Custom's proposal reflects that Custom has performed this work outstandingly for the past 5 years (and Custom's experience score was 20.6 points) while Ree's is a relatively new company. Further, Custom states that Ree's initial experience proposal was scored at 14.4 out of 25 points and, by Ree's submitting only two additional forms regarding experience, Ree's final score was raised to 20 points. Custom concludes that Treasury's scoring of the relative experience of both firms was improper.

In response, Treasury has furnished documents showing that its evaluators recognized that although Ree's was a relatively new company with no experience in cost-type contracts, Ree's principals worked in supervisory and management capacities for other firms which had similar cost-type contracts.

In considering protests against a procuring agency's evaluation of proposals, we recognize that the relative desirability of proposals is largely subjective, primarily the responsibility of the procuring agency, and not subject to objection by

our Office unless shown to be unreasonable, arbitrary, or violative of law. See, e.g., Moshman Associates, Inc., B-192008, January 16, 1979, 79-1 CPD 23. Here, the experience of Ree's principals was properly considered in scoring the experience of Ree's and we have no basis to disagree with Treasury's relative assessment of Custom's and Ree's experience. See Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439.

Regarding the cost factor, the RFP required information on seven cost elements. Custom received the maximum score (13 total points) in three (productive man-hours, supervisory man-hours, and equipment cost) of the seven cost elements and Custom has no objection to Treasury's scoring of those cost elements. Custom contends that Treasury improperly scored the four other cost elements (materials, linen service, award fee, and General and Administrative).

With regard to materials and linen service, the record shows that Treasury used a preestablished proposed cost-point system to assign evaluation scores. For example, if an offeror's proposed cost for materials was within 5 percent of the Government estimate, then the maximum score (3 out of 35 points) was to be awarded; for a proposed cost of more than 15 percent below the Government estimate, 0 points were to be awarded. Ree's proposed cost of materials was slightly above 5 percent of the Government estimate and Ree's was awarded 2.5 points. Custom's final proposed cost of materials was more than 15 percent below the Government estimate and Custom was awarded 0 points.

Custom objects to its materials score because Custom contends that Treasury encouraged Custom to propose too low a cost. Custom's proposed cost was initially about \$54,000. Treasury advised Custom that its proposed cost was substantially above the undisclosed Government estimate for materials (about \$36,000). In its first best and final offer, Custom proposed a materials cost of about \$44,000. Treasury advised Custom that its proposed cost was still high and Treasury suggested that Custom eliminate the cost of possible duplication or excess quantities from its proposal. Custom's final offer was \$28,680.40.

We are not persuaded that Treasury was the cause of Custom proposing too low. In our view, Treasury's advice to Custom was adequate to inform a knowledgeable competitor, like Custom, the incumbent over the last 5 years, that its initial offer was unreasonably high and its second offer was better but some improvement could be made if errors in quantity estimates were made. Thus, we find that Custom's final offer was apparently based on Custom's business judgment and not on misleading advice from Treasury.

Custom objects to its linen service score (3 of 5 points) and Ree's score (3 of 5 points) because Custom contends that those scores are based on an erroneous Government estimate. Custom contends that its proposed cost of \$141,757 is better than Treasury's estimate of \$154,960 because Custom's proposed cost is based on its long-term relationship with its linen supplier, resulting in Custom's lower projected price for linen service. In response, Treasury reports that the Government estimate was based on actual expenses (adjusted for inflation) from prior contracts for similar services.

In considering protests objecting to agency determinations regarding the realism of an offeror's proposed costs, we have taken the position that the determination of the realism of proposed costs for cost-reimbursement contracts is within the discretion of the procuring agency and is subject to objection only if it has no rational basis. See Support Systems Associates, Inc., B-200332, February 9, 1987, 82-1 CPD 112. Here, Treasury's estimate is based on actual expenses (adjusted for inflation) from Custom's recent contract for similar services. In our view, Treasury's estimate was reasonable and it was proper for Treasury to use that estimate as a basis for assigning linen service cost scores to both offerors.

Custom objects to the method used by Treasury to score General and Administrative costs and award fee. Treasury's plan in both areas was to award the lowest realistic cost proposal the maximum score and to award no points to the highest realistic cost proposal, with proposals in between receiving proportional scores.

Here, only two offerors were in the competitive range and Ree's submitted the low cost proposal in both areas. Following the scoring plan, Treasury awarded Ree's the maximum 4 points for General and Administrative and 10 points for award fee; Custom received no points in either category.

With regard to award fee, Ree's proposal set a ceiling at \$35,643 and Custom's proposal set a ceiling at \$36,099. Custom contends that the difference in award fee of \$456 did not justify a 10-point scoring spread for award fee. With regard to General and Administrative, Ree's proposal estimated expenses at \$11,194 and Custom's estimate was \$36,099. Treasury questioned certain of the expense items included in Ree's amount, but concluded that Ree's proposal was the low realistic one.

Custom contends that Ree's General and Administrative proposal was unrealistically low and, under the terms of the RFP, Ree's should be penalized by being awarded 0 points. Ree's explains that as a new small company, it has very low indirect costs and for the first 4 months of the contract Ree's has not exceeded the corresponding portion of the estimate. Before award, Treasury performed an audit review of the awardee's proposal and concluded that the awardee could perform within the stated General and Administrative amount.

In our view, Treasury's assessment of the realism of Ree's proposed General and Administrative was reasonable (see R & D Maintenance Services, Inc., B-205230, April 6, 1982, 82-1 CPD 320); thus, we will not question it or Treasury's related determination to award Ree's the maximum score for General and Administrative.

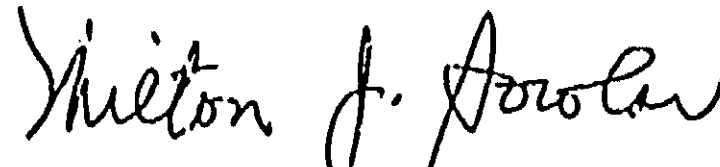
With regard to the scoring of award fee and General and Administrative, we have stated that although agencies have broad latitude in selecting the scoring method, a scoring system should not be used if it distorts the results; we have noted that spread scoring over the entire point range, as here, sometimes can distort results. See, e.g., Francis & Jackson, Associates, 57 Comp. Gen. 244 (1978), 78-1 CPD 79. In our view, the small (about 1.5 percent) difference in the award

fee ceiling should not have resulted in a 10-point scoring difference for that category. The scoring of General and Administrative is also distorted.

Despite these distorted scores, the record contains adequate information for our Office to conclude that Custom's total score would not have exceeded Ree's total score. We arrive at that conclusion because even if Custom was entitled to a maximum score of 10 points in the award fee category, Custom could not reasonably have obtained enough points in the General and Administrative category to overcome Ree's remaining 1.3 point advantage. In the General and Administrative category, Ree's is clearly entitled to a maximum score of 4 points and Custom's proposed cost (which was more than 300 percent more than Ree's agency-evaluated cost) is clearly not entitled to the 1.4 points that Custom would need to have higher total score. Therefore, we find that Custom was not prejudiced by the agency's use of an improper scoring method.

Finally, Custom suggests that the awardee should not have been selected based on the RFP's scoring system; instead, Custom states that the low cost, technically acceptable offer should have been selected. This aspect of Custom's protest concerns an alleged apparent solicitation impropriety. Custom first raised this protest basis many months after the closing date for receipt of initial proposals. We find this aspect of the protest to be untimely under our Bid Protest Procedures because it was not filed here prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1982).

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States